

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BRIAN METHE, <i>et al.</i> ,	:	Case No. 1:17-cv-749
Plaintiff,	:	
	:	Judge Timothy S. Black
vs.	:	
	:	
AMAZON.COM.DEDC,LLC, <i>et al.</i> ,	:	
Defendants.	:	

**ORDER DENYING DEFENDANT’S MOTIONS
FOR SUMMARY JUDGMENT (Doc. 25) & FOR ORAL ARGUMENTS (Doc. 34);
AND GRANTING PLAINTIFF’S RULE 56(d) MOTION (Doc. 31)**

This copyright infringement case is before the Court on the motion of Defendant Amazon.com.dedc, LLC (“Amazon”) for summary judgment (Doc. 25). Amazon moved for summary judgment before all the parties had appeared in this case, and before the parties had engaged in any discovery. Amazon alleges it is not liable for copyright infringement under the “service provider” exception codified at 17 U.S.C. § 512(c), and supported its position with affirmative evidence.

In response, Plaintiff filed a motion under Federal Rule of Civil Procedure 56(d) to defer consideration of Plaintiff’s motion until the parties were able to conduct discovery. (Doc. 31). Plaintiff’s motion is supported by an affidavit that indicates Plaintiff’s counsel has attempted to obtain information from Amazon substantiating its defense, but to date, has not been able to do so.

Plaintiff’s Rule 56(d) motion (Doc. 31) is well-taken. Federal Rule of Civil Procedure 56(d) allows this Court to defer, or deny, a motion for summary judgment if

the nonmovant shows that it cannot present sufficient facts to oppose the motion. Here, Plaintiff has made such a showing by way of an affidavit stating Plaintiff has tried, but failed, to obtain the information necessary to verify and/or oppose Amazon's safe harbor defense.

Amazon correctly argues that non-movants requesting Rule 56(d) relief are required to specify the discovery they need to oppose the motion, and argues that Plaintiff did not identify that discovery with specificity. The Court does not agree. In light of the fact that the parties had not engaged in any discovery at the time of Amazon's motion for summary judgment, Plaintiff has submitted, to this Court's satisfaction, a sufficient description of the discovery needed. Now that all parties have either appeared or been found by the Clerk to be in default, the Court will set forthwith a preliminary pretrial conference to discuss calendar and discovery matters. Because the Court finds oral argument on this issue to not be necessary, Amazon's motion for oral argument (Doc. 34) is denied.

For the foregoing reasons:

1. Plaintiff's Rule 56(d) motion (Doc. 31) is **GRANTED**; and
2. Amazon's motion for summary judgment (Doc. 25) and motion for oral argument (Doc. 34) are **DENIED**, without prejudice.

IT IS SO ORDERED.

Date: 3/15/19

s/ Timothy S. Black
Timothy S. Black
United States District Judge